

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

**JASON R. ODEM, on his own behalf,
and on behalf of those similarly situated,**

§

§

Plaintiff,

§

§

vs.

§ CASE NO. 3:08-cv-1196-L

§

**CENTEX HOMES, INC., A Florida
Corporation**

§

§

§

Defendant.

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§

**DEFENDANT'S MOTION TO STAY PENDING ADJUDICATION OF
DEFENDANT'S OBJECTIONS TO THE MAGISTRATE'S ORDER
GRANTING CONDITIONAL CLASS CERTIFICATION AND
FACILITATING NOTICE TO POTENTIAL CLASS MEMBERS**

Defendant,¹ Centex Homes, a Nevada General Partnership, (“Centex”), by and through its undersigned counsel, hereby files its Motion to Stay Pending Adjudication of Defendant’s Objections to the Magistrate’s Order Granting Conditional Class Certification and Facilitating Notice to Potential Class Members entered by the Court on April 29, 2009, and states as follows:

Plaintiff, on his behalf and on behalf of those similarly situated, filed an Opposed Motion for Conditional Certification of an FLSA Collective Action and for an Order Permitting Court-supervised Notice of this Action to Potential Opt-in Plaintiffs on November 7, 2008. Defendant filed its Response on December 13, 2008. The Magistrate’s Order granting Plaintiff’s Motion includes the following orders:

Within twenty (20) days of the date of this Order, the Parties are directed to confer and to submit to Stickney.Orders@txnd.uscourts.gov Joint Proposed Notice to Potential Plaintiffs. If the Parties cannot agree on the language of the

¹ Defendant was improperly named in Plaintiff’s Complaint and Demand For Jury Trial as “Centex Homes, Inc.” The entity that employed Plaintiff, and thus the proper entity to be named Defendant in this litigation, is “Centex Homes, a Nevada General Partnership.”

Proposed Notice to Potential Plaintiffs, they may submit separate proposed notices for Court determination.

Within twenty (20) days of the date of this Order, Defendant shall produce to Plaintiff the names and last known addresses of the current and former salaried employees in the positions of Field Manager I, Field Manager II, and Field Manager III who worked for Defendant in the United States within the last three years from the date of this Order.

Plaintiff shall not issue notice to those individuals whose names are being provided until this Court approves a form of Notice to Potential Plaintiffs. The Consent to Join form submitted by Plaintiffs at Exhibit 14 of the Appendix shall be enclosed with the approved form of Notice to Potential Plaintiffs, along with a self-addressed, postage paid return envelope. Plaintiff shall mail the Notice and Consent forms by first class mail or overnight delivery at Plaintiff's cost.

The Potential Plaintiffs have sixty (60) days after the date the Notice and Consent forms are mailed to file a Consent to Join form to opt-in to this litigation. A Consent to Join that is postmarked on the deadline is considered timely. Plaintiffs shall provide the Court and opposing counsel with notice of the date on which the Notice forms were mailed.

Defendant intends to file Objections to the Magistrate's Order granting conditional class certification and court facilitated notice to potential class members within ten days of the Magistrate's Order, as permitted under Federal Rule of Civil Procedure 72. "A district court has inherent power 'to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.'" *United States v. Colomb*, 419 F.3d 292, 299 (5th Cir. 2005) (quoting *Landis v. N. Am. Co.*, 299 U.S. 248, 254, 81 L. Ed. 153, 57 S. Ct. 163 (1936)). To allow these proceedings to continue while the Court is considering Defendant's Objections to the Magistrate's Order Granting Conditional Class Certification and Facilitating Notice to Potential Class Members will only waste the time and resources of all involved—including this Court whereas allowing the proceedings in this case to be stayed just long enough for this Court to rule on Defendant's Motion would preserve time and resources. The brief delay requested herein causes little disruption to the case when compared to the alternative waste of

resources that may result from allowing the case to proceed in the interim. Defendant therefore respectfully requests that the Court stay all deadlines incorporated in the Magistrate's Order pending an ultimate determination of the issues set forth in Plaintiff's Motion for Conditional Certification of an FLSA Collective Action and for an Order Permitting Court-supervised Notice of this Action to Potential Opt-in Plaintiffs.

WHEREFORE, Defendant respectfully requests that this Court (i) grant its Motion for Stay Pending the Court's Adjudication of Defendant's Objections to the Magistrate's Order Granting Conditional Class Certification and Facilitating Notice to Potential Class Members filed by the Court on April 29, 2009; and (ii) grant such other and further relief as this Court deems just and proper.

DATED: May 1, 2009

Respectfully submitted,

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ATTORNEYS FOR DEFENDANT

CERTIFICATE OF CONFERENCE

Counsel for Defendant conferred by e-mail with Counsel for Plaintiff, Gregg Shavitz and Carlos Leach, regarding this motion on Friday, May 1, 2009. Counsel for Plaintiff stated that they are opposed to this motion.

/s/ Kimberly Rives Miers
Counsel for Defendant

CERTIFICATE OF SERVICE

On May 1, 2009, I electronically submitted the foregoing document with the Clerk of the Court for the U.S. District Court, Northern District of Texas, using the electronic case files system of the Court. I hereby certify that I have served all counsel and/or pro se parties of record electronically or by another manner authorized by Federal Rule of Civil Procedure 5(b)(5):

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